No. 92-1739

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1992

BARBARA J. NORMAN, ET AL.,
(THE HAROLD WASHINGTON PARTY – HWP),

*Petitioners,*

vs.

DOROTHY REED, ET AL.,

*Respondents.*

## Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

## PETITION FOR A WRIT OF CERTIORARI

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(a)

## THE QUESTIONS PRESENTED FOR REVIEW

THE QUESTIONS PRESENTED FOR REVIEW (of the decision of the Illinois Supreme Court decided on remand from this Court, Norman v. Reed (1992), 502 U.S. ___, 116 L.Ed. 2d 711, 112 S.Ct. 698, as stated by the Illinois Supreme Court's decision on remand, Reed v. Kusper (1992), 154 Ill. 2d. 77, 607 N.E. 2d 1198, "to address the following issue of first impression,") ARE:

(1) "WHETHER THE FAILURE OF A NEW POLITICAL PARTY TO INCLUDE [A COMPLETE SLATE OF] JUDICIAL CANDIDATES ON ITS SLATE INVALIDATES THE ENTIRE SLATE UNDER ARTICLE 10 OF THE [ILLINOIS] ELECTION CODE (THE CODE) (ILL.REV.STAT. 1989, CH. 46, PAR.1-1 ET SEQ.); AND IF IT DOES,

(2) WHETHER THIS 'COMPLETE [JUDICIAL] STATE REQUIREMENT' OF THE CODE IS UNCONSTITUTIONAL [UNDER THE FIRST AMENDMENT CONSTITUTIONAL RIGHT OF POLITICAL ASSOCIATION AND THE FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION]."

(b)

## THE LIST OF PARTIES TO THE PROCEEDINGS IN THE ILLINOIS SUPREME COURT

The parties to the proceedings in the Illinois Supreme Court whose judgment is sought to be reversed are: Dorothy Reed, Valerie Sutton, Patton L. Feichter, Ervin Ricks and David Barrera [the Democratic Party], Plaintiffs, Appellees vs. Barbara Norman [the Harold Washington Party-HWP] and The Cook County [Illinois] Officers Electoral Board, Defendants, Appellants.

(c)

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(d)

## OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE

The decision of the Cook County [Illinois] Officers Electoral Board, which ordered certain Harold Washington Party candidates placed on the ballot was entered on August 29, 1990 and is not officially reported. On review, the Circuit Court of Cook County, Illinois, on September 20, 1990 affirmed the Cook County Officers Electoral Board's decision in part and reversed it in part. This decision of the Circuit Court of Cook County, Illinois is likewise not officially reported.

The Illinois Supreme Court issued an order on October 12, 1990, affirming the Circuit Court's decision to which three Justices dissented in two separate written opinions, in which each dissenting Justice joined. This order and dissenting opinions have not been officially reported.

This Honorable Court on October 26, 1990, granted certiorari, stayed the decision of the Illinois Supreme Court, ordered the HWP candidates placed on the November 6, 1990 Cook County ballot and on January 14, 1992, rendered a decision which upheld the decision of the Cook County Officers Electoral Board, affirmed in part, reversed in part the decision of the Illinois Supreme Court but remanded the cause to that Court for it to interpret and determine the constitutional validity of the full judicial slate requirement of the Illinois Election Code. This United States Supreme Court decision is reported in *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698 (1992).

The decision of the Illinois Supreme Court on remand interpreted the Illinois Election Code as requiring a full judicial slate, but the Illinois Supreme Court did not decide the constitutional validity of such requirement. This decision was rendered on December 4, 1992, and is officially reported in 154 Ill.2d 77, 607 N.E.2d 1198. Review and reversal of this Illinois Supreme Court decision is herein sought by this instant petition for a writ of certiorari.

**(e)**

**JURISDICTIONAL STATEMENT**

The grounds on which the jurisdiction of this Court is invoked are:

(i)

The date of the entry of the judgment sought to be reviewed is December 4, 1992.

(ii)

The date of the order denying the petition for rehearing is February 1, 1993.

(iii)

[Inapplicable]

(iv)

The statutory provision which confers on this Court jurisdiction to review the judgment in question by writ of certiorari is Title 28 USC, § 1257.

(f)

## THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved are the 1st and 14th Amendments to the Constitution of the United States, which respectively provide in pertinent part:

> "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
>
> . . .
>
> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutory provisions involved are Ill.Rev.Stat. 1989, Chapter 46, Illinois Election Code, Section 110-2, which states:

> "Any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, or in any other district or in any political subdivision (other than a municipality) not entirely within a single county shall file with the State Board of Elections a petition, as hereinafter provided; and any such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk; * * * . Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in

> the State, or such district of political subdivision as the case may be, at the next ensuing election then to be held; * * * ."

and Section 1 - 3 (6) and (14), which states:

> "6. Political or governmental subdivision means any unit of local government, or school district in which elections are or may be held. 'Political or governmental subdivision' also includes, for election purposes, Regional Boards of School Trustees, and Township Boards of School Trustees."

> "14. 'District' means any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts."

(g)

## STATEMENT OF THE CASE

Petitioners, Barbara J. Norman, et al. [the Harold Washington Party – HWP] filed its nominating petitions to have its candidates placed on the November 6, 1990 Cook County, Illinois general election ballot. Respondents, Dorothy Reed, et al., [the Democratic Party] filed objections with the Cook County Officers Electoral Board, [the CCOEB], to the HWP nominating petitions which sought to bar and/or remove the HWP candidates from the ballot on the ground that the HWP did not field a

complete slate of judicial candidates, and the HWP nominating petitions were therefore invalid and the other HWP candidates should be barred from the ballot. After an evidentiary hearing, the CCOEB rendered its decision which, inter alia, held that the Illinois Election Code, Ill.Rev.Stat., 1989, Ch. 46, Sections 1 - 3 (6) and (14) and Section 10-12 did not require the HWP to field a judicial slate and ordered the HWP candidates placed on the ballot.

On appeal, the Circuit Court of Cook County, Illinois, reversed the CCOEB and held that the complete slate requirement of Section 10-13 of the Illinois Election Code required the HWP to field a complete judicial slate and that because the HWP nominating petitions failed to do so, the other HWP candidate should be barred from the ballot.

On review, the Illinois Supreme Court did not address "whether, under Illinois law, the [HW] Party's omission of judicial candidates doomed the entire slate.", and for that reason, on Writ of Certiorari, this Court "remand[ed] the case to [the Illinois Supreme] Court for its prompt resolution of this issue * * * not inconsistent with this opinion." *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 709 (1992).

On remand, the Illinois Supreme Court initially noted, quite accurately, that,

> "This cause was remanded to this Court from the United States Supreme Court * * * to address the following issue of first impression: whether the failure of a new political party to include judicial candidates in its slate invalidates the entire slate under Article 10 of the Election Code

> * * * and if it does, whether this 'complete slate requirement' of the Code is unconstitutional."

After so stating, the Illinois Supreme Court then held:

> "The first question to be answered is whether the Washington Party must disclose candidates for all available positions, or for just those in which it intends to run a candidate. For purposes of this question, we believe that the statute is unambiguous. * * * the statute clearly requires that the petition for the formation of the Washington Party shall contain a complete list of candidates for ALL offices to be filled within the political subdivision of Cook County."

The Illinois Supreme Court then concluded:

> "The next question * * * is whether the judicial offices at issue are offices of the political subdivision in which the Washington Party is fielding candidates * * * the judges at issue 'are elected not from the County of Cook as a unit of local government, but rather from the County of Cook Judicial District' which is a different unit of government. (Ill.Const. 1970 Art. VI, Sec. 2). Accordingly, we find that these judicial offices are not of the same 'political subdivision' in which the Washington Party is fielding candidates."

The Illinois Supreme Court in choosing not to comply with this Court's remand mandate which directed it to determine the constitutionality of the Illinois Election Code's complete judicial slate requirement, concluded:

> "As a result of our finding as to the first part of the question remanded to us, we need not render an opinion as to the constitutionality of the 'complete slate requirement' of Section 10-2 of the Code. This issue is now moot, since the Washington Party satisfied Section 10-2 by slating the candidates that it was required to do."

Illinois Supreme Court Justice Michael Bilandic took no part in the consideration of the case or the Court's decision, and Justice Heiple authored a dissenting opinion (App. 11-13), from which we hereinafter quote and on which we herein strongly rely, inter alia, for the granting of the Writ of Certiorari. We further significantly note that on the Illinois Supreme Court's denial of the Petition of Barbara Norman, et al. [HWP], for rehearing on February 1, 1993, Justices "Bilandic, Harrison and McMorrow, J.J. took no part." (App. 14) The composition of the Illinois Supreme Court changed after the date of that Court's original opinion, October 12, 1990, which removed the HWP candidates from the ballot and in which three of the Illinois Supreme Court Justices dissented, and the date on which that Court's instant opinion was rendered on December 4, 1992, and the date on which that Court denied the Petition for Rehearing, February 1, 1993, in which, as stated, three of the Illinois Supreme Court Justices took no part. Thus, considering, (1) the initial dissenting opinions of the three Illinois Supreme Court Justices, (2) the subsequent instant dissenting opinion of Illinois Supreme Court Justice Heiple, (3) that the three Justices took no part in consideration or denial of the Petition for Rehearing, and (4) the Illinois Supreme Court's instant decision in which Justice Bilandic took no

part, and of which review is herein sought, is a decision of a minority of only three of the Court's seven Justices.

**(h)**

**STAGE OF PROCEEDINGS AT WHICH FEDERAL QUESTIONS RAISED**

Petitioners' First Amendment Constitutional right of political association and their Fourteenth Amendment Constitutional right to due process of law and the equal protection of the laws were raised by Petitioners and passed upon in the initial proceedings before the Cook County Officers Electoral Board and thereafter, on review, in the Circuit Court of Cook County, Illinois. This Court expressly noted in *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698 (1992), that:

> "the Circuit Court held that, under Section 10-2 the exclusion of judicial candidates on the slate was a failure to fulfill the 'complete slate requirements' of the Election Code. The [Circuit] Court then overruled the Electoral Board and treated their failure as an alternative ground for invalidating the [HW] Party's entire slate."
>
> "The Supreme Court of Illinois itself did not address it and therefore did not decide whether, under Illinois law, the [HW] Party's omission of judicial candidates doomed the entire slate. We therefore remand the case to that Court for its prompt resolution of [the constitutionality of] this issue."

The Illinois Supreme Court's decision on remand did not decide this constitutional issue as this Court mandated. Review and reversal of this Illinois Supreme Court decision is herein sought.

(i)

## ARGUMENT FOR ALLOWANCE OF THE WRIT

### I

The Illinois Supreme Court's unconstitutional holding, by a minority of that Court, that the Illinois Election Code requires a new political party to field a complete slate of judicial candidates for over 300 Cook County, Illinois Circuit Court judicial offices, 26 Illinois Appellate Court, First District (Cook County) judicial offices, and 3 Illinois First District (Cook County) Illinois Supreme Court judicial offices, is just another of that Court's repeated, persistent despicable refusals to follow the Constitution and this Court's opinions and interpretations thereof in voters' rights and election cases. *Illinois Election Board v. Socialist Workers Party*, 440 U.S. 173, 59 L.Ed.2d 280, 99 S.Ct. 983 (1979); *Moore v. Ogilvie*, 394 U.S. 814 (1969); *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698, *Anderson v. Celebreeze*, 466 U.S. 780, 75 L.Ed.2d 547, 103 S.Ct. 1564 (1983); *Williams v. Rhodes*, 393 U.S. 23, 21 L.Ed.2d 24, 895 S.Ct. 5 (1968). This instant Illinois Supreme Court holding is simply another flagrant attempt by that Court to retain for the Cook County, Illinois Democratic party its ironclad, exclusive grip on the nomination, selection, election and tenure of these Cook County judicial offices. This strict control over the Cook County, Illinois judiciary by the Democratic Party

has produced the most corrupt judiciary in the nation's history, a corruption which, over the past eight years, has sent 16 Cook County, Illinois Circuit Court judges to federal prison for judicial corruption, with an additional judge presently awaiting sentence in the U.S. District Court in Chicago for accepting bribes to fix murder cases. A judicial corruption which also, over the same period, has sent over 75 Cook County, Illinois Circuit Court attaches and law officers to federal prison. This Democratic Party deplorable constriction effectively excludes opposing political party competition and opposition and must be broken, which is literally impossible if a new political party is required to field a complete slate for each of the numerous aforementioned judicial offices.

II

This unnecessary and extremely difficult, if not impossible, requirement of a complete judicial slate in Cook County, Illinois by a new political party does not promote, advance or protect any legitimate state interest, but rather, such requirement unconstitutionally suppresses the development of new political parties and violates the constitutional rights "of likeminded voters to gather in pursuit of common political ends" and destroys "the opportunities of all voters to express their own political preferences." The full judicial slate requirement is repugnant to and violates this Court's expressed holdings in *Illinois Election Board v. Socialist Workers Party*, 440 U.S. 173, 59 L.Ed.2d 280, 99 S.Ct. 983 (1979); *Anderson v. Celebreeze*, 460 U.S. 780, 75 L.Ed.2d 547, 103 S.Ct. 1564 (1983); *Williams v. Rhodes*, 393 U.S. 23, 21 L.Ed.2d 24, 89 S.Ct.5 (1968); *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698; *Moore v. Ogilvie*, 394 U.S. 814 (1969).

## III

To require a new political party to field a complete judicial slate for all the Cook County judicial offices when there is no such requirement of the established political parties clearly violates constitutional fundamental fairness, due process and equal protection. Illinois Supreme Court Justice Heiple, in his dissenting opinion in the instant case, *Reed v. Kusper,* 154 Ill. 2d 77, at pages 88-89, (App. 11-13) expressed the constitutional infirmities of a full judicial slate requirement of a new political party thusly:

> "I respectfully dissent from the majority opinion in this case for the following reasons:
>
> . . . . Third, because the meaning which the majority assigns to the statute renders it unconstitutional and, thus, defective. Finally, I fault the majority for declining to deal with the constitutional infirmity which its erroneous interpretation of the statute creates.
>
> . . .
>
> I am also concerned with fundamental fairness. As to fairness, it would seem that new political parties deserve to be treated on a basis of some equivalence or equality. That being the case, since established political parties are not required to offer full slates of candidates, it does not seem fair to require new political parties to do so. It is quite commonplace and legally acceptable for established political parties to offer slates of candidates with many, or in some cases most, of the positions to be filled left blank. It is difficult, if not impossible, for political parties to offer full slates in all locales. Even established political parties could not meet this requirement if called upon to do so in every

> case. To impose this requirement on new political parties, while excusing established political parties, amounts to a denial of equal protection of the laws. Moreover, such an interpretation diminishes the right of citizens to vote for candidates of their choice. All of this, in my opinion, violates both article I, section 2, of the Illinois Constitution and the fourteenth amendment to the Federal Constitution. (Ill. Const. 1970, art. I, § 2; U.S.Const., amend.XIV.)"

Although this Court in *Norman v. Reed*, 502 U.S. ___ 116 L.Ed.2d 711, 112 S.Ct. 698, stated, footnote 12,

> "We express no opinion as to the constitutionality of a 'complete slate requirement' that would invalidate petitioners' slate for their failure to field judicial candidates",

the Justices of this Court, however, clearly expressed their concerns, via questions to counsel during oral argument of *Norman* for the possibility of an equal protection constitutional infirmity by a requirement of a complete judicial slate for a new political party, when no such requirement is imposed on the established political parties. These questions by the Justices and counsel's responses thereto are set forth in Appendix, pages 16-24. The Illinois Supreme Court was made aware of these concerns by the Justices of this Court because the aforesaid questions by them and counsel's responses thereto were set forth in Petitioners' brief in the Illinois Supreme Court.

## IV

The Illinois Supreme Court's conclusion that the complete slate requirement is moot, and that the Court "need not render an opinion as to the constitutionality of the 'complete slate requirement' " is in direct defiance of this Court's opinion and remand mandate in *Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698 (1992). The Illinois Supreme Court expressly admitted in *Reed v. Kusper*, 154 Ill.2d 77, 78-79 (1992), that:

> "This cause was remanded to this Court from the United States Supreme Court . . . to address- . . . whether this 'complete [judicial] slate requirement' of the [Illinois Election] Code is constitutional."

The Illinois Supreme Court disregarded this Court's said remand mandate. The Illinois Supreme Court also disregarded this Court's language in NORMAN that an issue should not be treated as moot, when "that issue would be worthy of resolution as 'capable of repetition, yet evading review.' *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969). There would be every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints if we should fail to resolve the constitutional issue that arose in 1990."

For the above and foregoing reasons, it is respectfully prayed and submitted that the Petition for a Writ of

Certiorari be granted and that the decision of the Illinois Supreme Court be reviewed and reversed.

Respectfully submitted,

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## APPENDIX

THE OPINION OF THE ILLINOIS SUPREME COURT SOUGHT TO BE REVIEWED

(Filed Dec 4, 1992)

Docket No. 70833 – Agenda 17 – September 1992. DOROTHY REED *et al.*, Appellees, v. STANLEY T. KUSPER, JR., *et al.*, Appellants.

JUSTICE MORAN delivered the opinion of the court:

This cause was remanded to this court from the United States Supreme Court (*Norman v. Reed* (1992), 502 U.S. ___, 116 L. Ed. 2d 711, 112 S. Ct. 698) to address the following issue of first impression: whether the failure of a new political party to include judicial candidates on its slate invalidates the entire slate under article 10 of the Election Code (the Code) (Ill. Rev. Stat. 1989, ch. 46, par. 1-1 *et seq.*); and if it does, whether this "complete slate requirement" of the Code is unconstitutional.

On August 6, 1990, Barbara J. Norman and others (the Party) filed petitions to place their names on the November 6, 1990, election ballot as candidates for office under the Harold Washington Party (Washington Party) name. The Washington Party candidates filed as a "new" political party in Cook County under article 10 of the Code (Ill. Rev. Stat. 1989, ch. 46, par. 10-1 *et seq.*), even though the Washington Party was already an established party in the City of Chicago. The Washington Party fielded candidates for all nonjudicial, countywide offices, and for county commissioners to be elected at-large within the City of Chicago (city commissioners), county commissioners to be elected at-large from outside the

City of Chicago (suburban commissioners) and commissioners of the Water Reclamation District of Greater Chicago.

Dorothy Reed and others (the objectors) filed objections to the Washington Party candidates' nomination pursuant to section 10-8 of the Code, contending that the Washington Party petitions lacked the requisite number of signatures, and had failed to meet other requirements of section 10-2 of the Code (Ill. Rev. Stat. 1989, ch 46, par. 10-2).

The Cook County officers electoral board (the board) examined the objections and held that the Washington Party candidates were entitled to appear on the November ballot, with the exception of the candidates for the water district and the suburban-district commissioners. The board found that the Washington Party had failed to gather the necessary number of petition signatures from within those districts in support of those candidates.

The objectors appealed the board's decision to the circuit court of Cook County. That court, in an order filed on September 20, 1990, affirmed the board's decision in part and reversed it in part. It held that the failure of the suburban commissioners' candidacy and the failure to present judicial candidates resulted in a failure by the Washington Party to submit a "complete slate" of candidates as required by section 10-2 of the Code, and that therefore all Washington Party candidates were ineligible for the ballot.

This court then reviewed the circuit court's decision pursuant to Illinois Supreme Court Rule 302(b) (134 Ill.2d R. 302(b)), and issued an order filed on October 12, 1990,

affirming the circuit court's decision on two separate grounds. First, this court held that the Washington Party candidates could not use the Washington Party party name because it was the name of an "established political party," in violation of section 10-5 of the Code. Second, this court held that the failure of the suburban commissioners' petitions resulted in the Washington Party's failure to file a complete slate of candidates and that, therefore, its nomination papers did not comply with section 10-2. As a result, this court found it unnecessary to address the remaining points raised on appeal, among them being whether the Washington Party's failure to slate judicial candidates was fatal to its candidates' petitions.

Subsequently, the United States Supreme Court granted *certiorari*, staying our decision, and consequently allowing the election to proceed on November 6, 1990, in accordance with the decision of the board. On January 14, 1992, the Supreme Court issued an opinion upholding the decision of the board. The Court held that (1) even though the election was over, the controversy was not moot; (2) the court's interpretation of the party-name rule, section 10-5 of the Code, violated the first amendment right of political association; (3) disqualifying *all* of the Washington Party candidates with sufficient signatures because of the failure of their suburban component imposed an unconstitutional signature requirement on the Washington Party; and (4) the suburban commissioner candidates were properly disqualified for failing to gain the requisite number of signatures. However, the Court did not consider whether the failure to field a judicial slate of candidates provided an alternative

ground for invalidating the Washington Party's entire slate, as was so held by the circuit court, because this question of Illinois law had not been reviewed by our court. (*Norman*, 502 U.S. at ___, 116 L. Ed. 2d at 727, 112 S. Ct. at 709). Instead, the Supreme Court remanded this question to our court.

Resolution of this issue requires an examination of section 10-2, which states:

> "Any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, or in any other district or in any political subdivision (other than a municipality) not entirely within a single county, shall file with the State Board of Elections a petition, as hereinafter provided; and any such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk; * * * . Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, shall * * * at the time of filing *contain a complete list of candidates of such party for all offices to be filled in the State, or such district or political subdivision as the case may be*, at the next ensuing election then to be held * * * ." (Emphasis added.) Ill. Rev. Stat. 1989, ch. 46, par. 10-2.

Section 1-3 of the Code contains the following pertinent definitions:

> "6. *'Political or governmental subdivision' means any unit of local government,* or school district in which elections are or may be held. 'Political or governmental subdivision' also

includes, for election purposes, Regional Boards of School Trustees, and Township Boards of School Trustees.

* * *

14. 'District' means any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts." (Emphasis added.) (Ill. Rev. Stat. 1989, ch. 46, pars. 1-3(6), (14).)

Accordingly, since the Illinois Constitution defines units of local government as including counties (Ill. Const. 1970, art. VII, § 1), then a county must logically be a political or governmental subdivision.

The Party argues that the determinative issue in this case is whether judges are considered to be county or State officers, and claims that if we find judges to be State officers, there is then no obligation to slate them in order to have a "complete list of candidates for such district or political subdivision." The Party offers five reasons for considering judges to be State officers rather than county officers. First, judicial candidates do not file their nominating petitions with the county clerk-they file with the State Board of Elections in Springfield. Second, judges are paid by the State from appropriations by the State legislature under the Illinois Constitution. Third, article VI, section 7, of the Illinois Constitution divides the State into judicial circuits of one or more counties. The existence of multiple-county circuits precludes judges from

being county officers. Fourth, article VI, sections 12 and 16, of the State Constitution provides that supreme, appellate and circuit court judges shall be nominated at primary elections or by petition. Fifth, section 7-4 of the Code defines county office or county officer in part by giving a list of examples which does not include judges.

The Party also contends that even if a judicial slate were required, the circuit court lacked authority to remove all Washington Party candidates from the ballot. This is so, it insists, since in *Anderson v. Schneider* (1977), 67 Ill. 2d 165, this court reversed the board's removal of an entire slate of "new" party candidates under section 10-2 of the Code when one of the candidates proved to be ineligible for office.

In addition to the points raised by the Party, the board (which also is a party to this action) makes some additional observations. First, it asserts that the judicial offices in question were not categorized for election purposes by means of the same political subdivision as the offices for which the Washington Party candidates were categorized. It contends that judges are elected by judicial districts (or circuits), whereas the offices for which the Washington Party slated candidates were to be elected by county. The board concludes that the applicable "district" for the judicial offices at issue was the Cook County judicial district,[1] which only *coincidentally* happens to be

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[1] Or judicial *circuit*, since the "First Judicial District shall constitute a Judicial Circuit" (Ill. Const. 1970, art. VI, § 7(a)), whereas the remaining four districts are subdivided into multiple circuits.

geographically coterminous with the "political subdivision" of Cook County. In further support of its argument, the board cites to *Black v. Cook County Officers Electoral Board* (N.D. Ill. 1990), 750 F. Supp. 901, wherein a Federal district court issued a memorandum opinion and order in response to several constitutional challenges to the Illinois circuit court's decision in the instant case. That court held that judicial candidates are elected to State, not county, offices and that, therefore, they need not be slated by new parties in a county election as a result of the "complete slate requirement."

The objectors, on the other hand, argue that judges are not State officers, relying on section 7-4 of the Code. This provision defines State office as one voted for by qualified electors of the entire State, and defines county office as one voted for by the qualified electors of the entire county. The objectors claim that since Cook County judges are voted for by only the electors of Cook County, they must be county officers. The objectors describe this issue as a red herring, because the Code requires a new party to submit candidates for "all offices to be filled in the political subdivision" regardless of the nature of the offices (*i.e.*, either State or county). The objectors assert that the Washington Party was required to field candidates for all offices to be filled at the ensuing general election within Cook County, which, according to the objectors, includes judges. They also note that even if judicial candidates were required to file with the State Board of Elections instead of the court clerk, the proposed new party must still file the names of its judicial candidates with the county clerk.

The Party, however, responds that not all judges are elected by the entire Cook County electorate. Some are elected at-large from the county, some are elected from the city district, and some are elected from the suburban district. This would further suggest that judges are not county officers under the definition in section 7-4(6) of the Code. At first glance, this argument would appear to conflict with the notion that county commissioners are county officers, since they too are elected in a similar manner. However, section 7-4(6) of the Code specifically states that those commissioners occupy county offices.

Because this controversy centers upon the interpretation of a portion of section 10-2, the role of this court is to ascertain the intent of the legislature and to give effect to that intent. In determining legislative intent, the courts should first consider the statutory language; where the language is clear and unambiguous, the courts must enforce the law as enacted without resort to other aids of statutory construction. *Kraft, Inc. v. Edgar* (1990), 138 Ill.2d 178, 189.

The first question to be answered is whether the Washington Party must disclose candidates for all available positions, or for just those in which it intends to run a candidate. For purposes of this question, we believe that the statute is unambiguous. The statute clearly states, "Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, * * * shall at the time of filing contain a complete list of candidates of such party *for all offices to be filled* in the State, or such district or political subdivision as the case may be * * * ." (Emphasis added.) (Ill. Rev. Stat. 1989, ch. 46, par. 10-2.) It

cannot be seriously contested that the "political subdivision" here in question is Cook County, as the Washington Party has slated candidates for countywide offices in Cook. Accordingly, the statute clearly requires that the petition for the formation of the Washington Party shall contain a complete list of candidates for *all* offices to be filled within the political subdivision of Cook County. (See *Anderson*, 67 Ill. 2d at 178-79.) Clearly, if the legislature meant that a new party has only to disclose the names of the candidates for each office whom it plans to run, it could have so stated.

The next question, and one in which the statute is unclear, is whether the judicial offices at issue are offices of the political subdivision in which the Washington Party is fielding candidates. If so, then the failure of the Washington Party to slate candidates for those open judgeships would have been a violation of the Code. We find it helpful to examine the interpretation of the statute by the board, the administrative agency which was established to hear and pass upon objections to the nominations of candidates for office (Ill. Rev. Stat. 1989, ch. 46, par. 10-9(2)). Of course, we are not bound by an administrative agency's interpretation of a statute. (*City of Decatur v. American Federation of State, County & Municipal Employees, Local 268* (1988), 122 Ill. 2d 353, 361.) However, courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute. Such an interpretation expresses an informed source for ascertaining the legislative intent. A significant reason for this deference is that agencies can make

informed judgments upon the issues, based on their experience and expertise. (*Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n* (1983), 95 Ill. 2d 142, 152-53.) We agree with the reasoning of the board, and therefore adopt its conclusion that the judges at issue "are elected not from the County of Cook as a *unit of local government*, but rather from the Cook County *Judicial District*" (emphasis added), which is a different unit of government. (Ill. Const. 1970, art. VI, § 2.) Accordingly, we find that these judicial offices are not of the same "political subdivision" in which the Washington Party is fielding candidates.

In addition, section 10-2 of the Code states that any group of persons desiring to form a new political party throughout any "judicial district" shall file with the State Board of Elections, and that any such group desiring to form a new political party within any county shall file such petition with the county clerk. Clearly, if the legislature had intended judicial and county candidates to be nominated on the same petition, the legislature would have provided for these petitions to be filed in one location. These different filing procedures indicate that there is no required linkage between the two sets of offices.

Finally, although we are not bound by the Federal district court's decision in *Black*, we do adopt its reasoning as to this issue, wherein the court placed heavy reliance upon the fact that, while judges were to be elected from separate judicial districts or circuits, all of the candidates slated by the Washington Party were to be elected from the political subdivision of a specific county, or separate districts therein (*e.g.*, city commissioners and suburban commissioners). As pointed out in *Black*, there

are only three instances in which an Illinois county and a judicial district (or circuit) are coextensive, one of which is Cook County. Throughout most of Illinois, multiple counties are grouped together to form judicial circuits. Consequently, we believe that it would be contrary to the intent of the legislature to interpret the "complete slate requirement" to have required the Washington Party to field judicial candidates, and therefore, we find that its failure to do so was not fatal to its nominating petitions.

As a result of our finding as to the first part of the question remanded to us, we need not render an opinion as to the constitutionality of the "complete slate requirement" of section 10-2 of the Code. This issue is now moot, since the Washington Party satisfied section 10-2 by slating the candidates that it was required to.

Accordingly, the judgment of the circuit court with regard to this issue is reversed.

*Reversed.*

JUSTICE BILANDIC took no part in the consideration or decision of this case.

JUSTICE HEIPLE, dissenting:

I respectfully dissent from the majority opinion in this case for the following reasons. First, because it assumes without analysis or explanation that the statute under examination is not ambiguous. In that connection, I believe that the statute *is* ambiguous. Second, because the majority assigns a meaning to that statute which I believe to be erroneous. Third, because the meaning which the majority assigns to the statute renders it unconstitutional and, thus, defective. Finally, I fault the majority for

declining to deal with the constitutional infirmity which its erroneous interpretation of the statute creates.

Before indulging in more discrete analysis, it is necessary to examine the statute itself. The statute in question provides that the "petition for the formation of a new political party * * * in any * * * political subdivision * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in * * * such * * * political subdivision." (Ill. Rev. Stat. 1989, ch. 46, par. 10-2.) The phrase "all offices to be filled" is subject to two possible interpretations. While this phrase could be interpreted to mean that a new political party must run candidates for all offices up for election, it could also be interpreted to simply mean that the new political party must list all of the candidates it intends to run for office. Thus, it is ambiguous.

Ambiguities in statutes need to be resolved by thought, study and analysis and the resolution needs to be supported with a reasonable explanation for the choice of meaning. The majority opinion does not do that. It simply chooses the meaning it likes and offers no supporting justification.

My choice for an interpretation of the ambiguous statutory language is that the new party must list all candidates that it intends to slate for office. Contrary to the majority, I would not read into the statute that new parties are required to offer full and complete slates which include all positions that are on the ballot. In that connection, it is reasonable to require that new parties list all of the candidates they intend to run at the time they file their qualifying petition. This is so since there is no

possibility of filling additional candidacies at a subsequent primary election. New parties get on the ballot initially only via the petition route and do not have a political primary election.

I am also concerned with fundamental fairness. As to fairness, it would seem that new political parties deserve to be treated on a basis of some equivalence or equality. That being the case, since established political parties are not required to offer full slates of candidates, it does not seem fair to require new political parties to do so. It is quite commonplace and legally acceptable for established political parties to offer slates of candidates with many, or in some cases most, of the positions to be filled left blank. It is difficult, if not impossible, for political parties to offer full slates in all locales. Even established political parties could not meet this requirement if called upon to do so in every case. To impose this requirement on new political parties, while excusing established political parties, amounts to a denial of equal protection of the laws. Moreover, such an interpretation diminishes the right of citizens to vote for candidates of their choice. All of this, in my opinion, violates both article I, section 2, of the Illinois Constitution and the fourteenth amendment to the Federal Constitution. (Ill. Const. 1970, art. I, § 2; U.S. Const., amend. XIV.) The relevant point here is that when we have a choice between interpreting a statute in alternative ways, one of which will render the statute constitutional and the other unconstitutional, we should choose the constitutional interpretation. *People v. Robinson* (1939), 372 Ill. 503, 505.

Since the majority opinion fails on all the above accounts, I respectfully dissent.

**ILLINOIS SUPREME COURT**
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**(217) 782-2035**

February 1, 1993

No. 70833 – Dorothy Reed, et al., appellees, v. Stanley T. Kusper, Jr., et al., etc., appellants. Appeal, Circuit Court (Cook)

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

Bilandic, Harrison and McMorrow, JJ., took no part.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on February 11, 1993.

**No. 70833**

**IN THE**

**SUPREME COURT OF ILLINOIS**

| | | |
|---|---|---|
| Dorothy Reed at al., Appellees | ) | AC1-90-2708 |
| v. | ) | TR90C0238<br>TR90C0244 |
| Stanley T. Kusper, Jr. et al., etc., Appellants | ) | (Filed Febr. 23, 1993) |

ORDER

This matter has come for consideration upon the motion of *appellants* to stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

/s/ Charles Freeman
Justice, Supreme Court of Illinois

The following are questions and comments by the Justices of the United States Supreme Court and Counsels' responses thereto on oral argument on October 7, 1991 before the Court on Writs of Certiorari of Norman v. Reed, 502 U.S. ___, 116 L.Ed.2d 711, 112 S.Ct. 698.

"Oral Argument of Cook County,

Illinois, First Assistant

State's Attorney Kenneth C. Gillis

on behalf of the CCOEB

Mr. Gillis * * * (tr. 19) The Cook County Electoral Board held that (7,800 suburban voters' signatures) did not show a modicum of support, and hence did not let them on the ballot in the suburban area.

What the Illinois Supreme Court seems to have done, although they did not use these words, is to apply (tr. 20) what's known in Illinois law as the complete slate requirement. It amounts to a rule that if any one of your candidates is off, they all go off. The Illinois Supreme Court's order stated that since there were not sufficient signatures in the suburbs, all the candidates went off.

This Court's order of last October 25th stayed that order and upheld the order of my client, the Electoral Board, which says if you qualify in the city, and you can show a modicum of support there, those candidates go on. And also the at-large candidates went on. It seems to me that the Illinois Supreme Court's order * * * that shows the workings of the complete slate rule * * * I submit that is a harsh rule and one that intends to block ballot access.

* * *

(tr. 22) QUESTION BY A JUSTICE: * * * You don't know how many people would have signed the petitions for these individuals. They signed for them as members of a slate.

MR. GILLIS: I really see no State interest in requiring a complete slate.

* * *

(tr. 24) QUESTION BY A JUSTICE: Mr. Gillis, you know, I simply can't find the questions presented, a question on whole slate questions. Am I overlooking one of the questions?

* * *

MR. GILLIS: The Illinois Supreme Court's order said you failed to get enough signatures in the suburbs, (tr. 25) then you're off the ballot entirely. That is the workings of what we call in Illinois the complete slate requirement.

* * *

Whether it's constitutionally impermissible to knock the HWP off the ballot. Because it imposes conditions that there's no compelling State interest.

* * *

(tr. 26) Political parties ought to be allowed to fashion their own business if that doesn't interfere with some compelling State interest

* * *

QUESTION BY A JUSTICE: Well, what would be your position on a State law which required a complete slate within say, just the city of Chicago? Say they required – say they had 25,000

signatures, but they were required to run a complete slate of officers?

MR. GILLIS: I don't think there's any State interest. I think that would be constitutionally impermissible.

QUESTION BY A JUSTICE: Is it because it's not indicative of the existence of a viable party that it can field candidates for all of the ballot positions?

MR. GILLIS: I think it's disciminatory [sic] against new political parties. Established political parties (tr. 27) don't have to do that. Basically there's no compelling State interest, no good reason, to knock all of the candidates off if one happens to go off or be found unqualified for the ballot.

And in this case it works a further vexatious result that these candidates brought forth 44,000 signatures and enough to qualify under Illinois law, and oops, because they did not qualify in one district, they could be off. This could go on in many jurisdictions. We just have to find one county or one State representative district where somebody doesn't qualify, and you could disqualify the whole ticket, I think that's just constitutionally impermissible.

It's another hoop to make new political parties jump through that existing political parties do not have to.

* * *

(tr. 28) Oral argument by

Gregory A. Adamski,

Attorney for the (Objectors)

Respondents.

(tr. 31) MR. ADAMSKI: * * * There is a section of the statute that says you have to put forward a complete slate of candidates for all positions – for all offices that are to be filled.

* * *

(tr. 33) QUESTION BY A JUSTICE: Aren't there instances in Illinois where the two major parties don't put up a complete slate?

MR. ADAMSKI: Yes.

QUESTION BY JUSTICE: Well then, what is the justification if the major parties aren't subject to the complete slate rule, for requiring it of a new party?

* * *

MR. ADAMSKI: * * * The fact is that there is an interest in promoting the two-party system * * *. The State has a right to set up certain restrictions in allowing new (tr. 34) parties. * * *. There's a gigantic advantage to running as a party, because the party only has to come up with 25,000 signatures on the nominating ballots for the district in which it is running. * * * And the State of Illinois says for new party formation it's 25,000. And the additional price that you have to pay to get that advantage is that you have to show us that you have a full slate of candidates. * * *.

QUESTION BY A JUSTICE: I think that in our cases, * * * we were talking in terms of requiring new parties to do almost as much, or perhaps as much, as the established [sic] parties. But Illinois requires a new party to do more, apparently.

* * *

(tr. 35) QUESTION BY A JUSTICE: But supposing that there has been no Republican candidate in a particular part of Chicago for many, many years. And then the Republicans want to start having a candidate there. They're not subject to this full slate requirement, are they?

(tr. 36) MR. ADAMSKI: No, they're not because they're an established party. * * * that is the price that Illinois puts on new parties. If you're going to come in and be a new party, if you're going to take advantage of this liberal 25,000 requirement, then you simply have to have a full slate of people.

QUESTION BY A JUSTICE: There are seven or eight offices – State's Attorney of Cook County, Assessor of Cook County, Clerk of Cook County, Sheriff of the County, Treasurer of Cook County, Superintendent of Education, and so forth. Supposing a party wanted to run for six of those, but not all seven or eight, whatever it is. The law would not permit them to qualify as a party unless they got 25,000 – and what is the State interest in requiring all eight instead of just six or seven?

MR. ADAMSKI: The State interest is that the State while it encourages party formation wants to be certain that individuals – that you put

forth a full party. That you are putting forth for the voters –

QUESTION BY A JUSTICE: Why doesn't that apply equally to the Republicans or the Democrats who might decide they haven't got a chance of electing the Clerk of Cook County for some reason – maybe the incumbent is so terribly popular that (tr. 37) they don't have to run a candidate. What is the State interest that justifies the disparate treatment?

MR. ADAMSKI: I don't know that you're correct that the Republican would not be subject to attack. I don't know – or the Democrat, whoever it is –

QUESTION BY A JUSTICE: Well, what's the State interest in making them run somebody that they know is going to lose, and they aren't going to spend any money trying to elect?

MR. ADAMSKI: WELL, I – THERE'S NO STATE INTEREST IN THAT. THERE'S NONE. (emphasis added)

* * *

(tr. 38) QUESTION BY A JUSTICE: What – I gather that though in this case because the suburban – the party, new party didn't get enough signatures in the suburban area and they got plenty in the city.

MR. ADAMSKI: That's correct.

QUESTION BY A JUSTICE: But nevertheless the new party couldn't run in either the city or the county.

MR. ADAMSKI: For the county positions. That's correct.

QUESTION BY A JUSTICE: Yeah, for the county positions.

(tr. 39) MR. ADAMSKI: That's correct.

QUESTION BY A JUSTICE: In effect, then, the people who are running for county commissioners from Chicago, even though they had more than 25,000 votes – or signatures, were off the ballot.

MR. ADAMSKI: That's correct.

QUESTION BY A JUSTICE: Because there weren't 50,000 in the whole county.

MR. ADAMSKI: That's correct.

QUESTION BY A JUSTICE: Why is – why doesn't that violate our cases?

MR. ADAMSKI: Your Honor, the cases say that the State has a right to put restrictions on to show that a particular party has a modicum of support. These people were saying – these people were representing to the public, and to their competitors in the other parties, that they were a party that had county-wide interests. They didn't. They didn't have –

QUESTION BY A JUSTICE: But our cases also say that you can't require more support for a subdivision of the State than you require for the whole State. And the whole State you only require 25,000, whereas for Cook County you require 50,000.

MR. ADAMSKI: Unless –

QUESTION BY A JUSTICE: How do you figure that?

(tr. 40) MR. ADAMSKI: The case – I think you're referring to the Socialists Workers case in particular, that case says unless there's a good reason.

* * *

(tr. 41) And the 5 percent rule, I suggest to you is not unreasonable and does not unduly burden them.

QUESTION BY A JUSTICE: It's only unreasonable when you (tr. 42) require more from the county than you would have for somebody to run statewide.

* * *

QUESTION BY A JUSTICE: I take it you're really not arguing that they struck this whole – that they disqualified the candidates from Chicago as well as from suburbia because they didn't get 50,000 votes?

QUESTION BY A JUSTICE: You wouldn't permit the people from Chicago who got their 25,000 signatures to run in the election because the suburbanites didn't get enough signatures.

MR. ADAMSKI: That's correct.

QUESTION BY A JUSTICE: So you're really saying they were – the Chicago people were disqualified because of the full slate rule.

MR. ADAMSKI: Well, I don't know –

QUESTION BY A JUSTICE: Isn't that right?

MR. ADAMSKI: I don't know about a full slate (tr. 43) rule.

QUESTION BY A JUSTICE: Why wouldn't you let the county people who got 25,000 – the Chicago people who got 25,000 votes run on the ballot? Why couldn't they get on the ballot? Why?

MR. ADAMSKI: Your Honor, well, because that's what the rules provide. If they want to run as independents, then each of them has to get 25,000 –

QUESTION BY A JUSTICE: No, they want to run under the party name.

MR. ADAMSKI: * * * that made their petition infirm. It made their petition improper. It made their petition invalid.

QUESTION BY A JUSTICE: Yeah, but it's because the party just didn't have candidates from suburbia that had enough signatures.

MR. ADAMSKI: That's exactly why.

QUESTION BY A JUSTICE: All right. And therefore, you disqualified the Chicago people as well."

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 8 1993
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No. 92-1739

In The

# Supreme Court of the United States

October Term, 1992

BARBARA J. NORMAN, ET AL.,

*Petitioners,*

vs.

DOROTHY REED, ET AL.,

*Respondents.*

**Petition For Writ Of Certiorari To The Supreme Court Of Illinois**

## ANSWER OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether there are special or important reasons for reviewing an Illinois Supreme Court decision that was decided strictly upon state statutory interpretation.

2. Whether the failure of the Harold Washington Party to include judicial candidates for the 1990 general election violated the complete slate rule and, therefore, did not meet the requirements of the Illinois Electoral Code.

3. Whether the complete judicial slate rule is a constitutionally-permissible restriction upon ballot access and party formation.

## THE LIST OF PARTIES TO THE PROCEEDINGS IN THE ILLINOIS SUPREME COURT

The parties to the proceedings in the Illinois Supreme Court whose judgement is petitioned for review were appellees Dorothy Reed, Valerie Sutton, Patton L. Feichter, Ervin Ricks, and David Barrera and appellants Barbara J. Norman and the Cook County Officers Electoral Board.

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## OPINIONS BELOW

The decision of the Cook County Officers Electoral Board was entered on August 29, 1990 and is not officially reported.

On September 20, 1990, the Circuit Court of Cook County, Illinois, reversed the Electoral Board's decision in part, and affirmed it in part. This decision is not reported.

On October 12, 1990, the Illinois Supreme Court affirmed the Circuit Court's decision. This decision is not reported.

On October 26, 1990, the Court granted the petition for writ of certiorari and stayed the decision of the Illinois Supreme Court.

On January 14, 1992, the Court affirmed in part, reversed in part, and remanded in part the decision of the Illinois Supreme Court. The decision is reported as *Norman v. Reed*, 502 U.S. ___, 112 S.Ct. 698 (1992).

On December 4, 1992, the Illinois Supreme Court entered its latest decision. The decision is officially reported as *Reed v. Kusper*, 154 Ill.2d 77 (1992).

## OBJECTIONS TO JURISDICTION

There are no proper grounds upon which the jurisdiction of the Court may be invoked because 28 U.S.C. § 1257 is inapplicable in that there is no federal or constitutional issue before the Court and in that the decision under review was decided solely on non-federal and non-constitutional grounds.

## ISSUES PRESENTED

Whether there are special or important reasons for reviewing an Illinois Supreme Court decision that was decided strictly upon state statutory interpretation.

Whether the failure of the Harold Washington Party to include judicial candidates for the 1990 general election violated the complete slate rule and, therefore, did not meet the requirements of the Illinois Electoral Code.

Whether the complete judicial slate rule is a constitutionally-permissible restriction upon ballot access and party formation.

## STATEMENT OF THE CASE

In 1989, the City of Chicago conducted a special mayoral election to fill the vacancy created by the untimely death of Harold Washington. In the Democratic primary preceding the special election, Alderman Timothy Evans ran against States Attorney Richard M. Daley. Mr. Daley soundly defeated Mr. Evans. Mr. Evans formed a "political party" of one – the Harold Washington Party, named after the beloved and deceased mayor who was a life-long member and adherent of the Democratic Party. Again, Mr. Daley soundly defeated Mr. Evans.

Under well-established Illinois law, Mr. Evans' Harold Washington Party became an established party for purposes of City elections.

After his loss, Mr. Evans returned to his regular Democratic duties, remained an Alderman and Committeeman, and did nothing to organize, promote, or even operate the Party that he established for the sole reason of running in the general mayoral election.

The City-wide Harold Washington Party lie dormant. No caucuses were held. No committeemen were elected. Nothing happened. Nothing – until the Party was again needed as a vehicle for another defeated Democratic candidate.

In 1990, general elections were conducted for the Cook County Board, States Attorney, Clerk, Recorder of Deeds, and eighteen judgeships. In the Democratic primary preceding these elections, R. Eugene Pincham ran against Richard J. Phelan for County Board President. Mr. Phelan soundly defeated Mr. Pincham.

Mr. Pincham, another life-long Democrat, responded by declaring that a Harold Washington Party would now expand itself to run in all County races. Democratic Alderman Evans had no part in this movement. The purported Harold Washington Party submitted a complete slate of County Board candidates, a complete slate of County-wide executive officer candidates, and nominating petitions of about 48,000 signatures from the City of Chicago and about 12,000 signatures from the suburban component of Cook County. No judicial candidates were slated.

The County offices at issue included (a) offices representing the interests of all County residents, (b) offices

representing only the interests of suburban County residents, and (c) offices representing only the interests of City County residents.

Respondents Dorothy Reed, Valerie Sutton, Patten Feighter, Ervin Ricks, and David Barrera are five Cook County residents who objected to the inclusion of Mr. Pincham's Harold Washington Party on the 1990 general election ballot.

Respondents raised various objections, only three of which currently merit discussion.

First, they submitted that Mr. Pincham and his followers were not entitled to use the name of Harold Washington Party because it was an established party and because there was no statutory authorization allowing the Pinchamites to utilize the Party's name. This is the "name" issue.

Second, they contended that the Party slate was invalid because it did not meet the 5% or 25,000 nominating signature requirement from both the City component of Cook County and the suburban component of the County. This is the "signature" issue.

Third, they claimed that the Party's failure to list a full slate of judicial candidates invalidated its entire slate. This is the "judicial slate" issue.

**1. The "Name" Issue**

The Cook County Electoral Board heard evidence from Democratic Alderman Timothy Evans, who testified that he had no objection to the Pinchamites' use of his

Party's name. The Board ruled that the Pinchamites could call themselves the Harold Washington Party.

The Cook County Circuit Court affirmed.

The Illinois Supreme Court reversed and determined that § 10-5 of the Illinois Election Code barred the Pinchamites from using the same name as a separate party established in the City.

By a 7-1 vote (Justice Thomas not yet having been appointed), the Court reversed and ruled that Alderman Evans' permission satisfied the requirements of § 10-5 and that any other construction of the section would render it unconstitutional.

This decision was final and has resulted in no further action.

**2. The "Signature" Issue**

The Electoral Board ruled that the failure of Mr. Pincham's Harold Washington Party to obtain 25,000 nominating signatures from the suburban component of Cook County rendered ineligible those County Board candidates from the suburban component.

The Cook County Circuit Court agreed and ruled that the suburban candidates were ineligible, that the Pinchamites did not have a complete slate of candidates required by the Illinois Electoral Code, and that the entire slate was ineligible.

The Illinois Supreme Court affirmed. It ruled that the suburban district petitions lacked insufficient nominating signatures, that the names of the candidates listed and

nominated for the suburban district did not qualify for placement on the ballot, and that a newly-formed County-wide party must submit nominating petitions with 25,000 signatures from the City and with another 25,000 signatures from suburban Cook County.

By a 7-1 vote, the Court affirmed in part and reversed in part. The Court ruled that the Pinchamite Harold Washington Party was ineligible to run candidates for the county positions designated as suburban seats. Because it failed to meet the requirement of 25,000, the Party did not establish itself in the suburbs and was not qualified to appear on the ballot for suburban county representatives.

This decision was final and has resulted in no further action.

### 3. The "Judicial Slate" Issue

The Electoral Board found that the Pinchamites were not required to field judicial candidates.

The Circuit Court reversed the Electoral Board and determined that the failure to include judicial candidates did not comply with the "complete slate rule" of § 10-2 of the Electoral Code.

The Illinois Supreme Court did not address this issue.

By a 7-1 vote, the Court remanded the case to the Illinois Supreme Court for a determination of "whether, under Illinois law, the Party's omission of judicial candidates doomed the entire slate." 112 S.Ct. at 709. The

Court specifically expressed no opinion about this subject.

With two justices abstaining, the Illinois Supreme Court ruled that the Illinois Electoral Code contains a complete slate requirement, but that the Party's omission of judicial candidates did not doom the entire slate because the Party was not obliged to nominate judicial candidates.

It is to this decision that the instant petition for a writ of certiorari is taken.

## ARGUMENT

### STANDARD OF REVIEW FOR GRANTING PETITIONS FOR WRITS

Supreme Court Rule 10.1 provides the considerations governing the Court's review on petitions for writs of certiorari. The Rule states that:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the

> accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort had decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The December 4, 1992 decision of the Illinois Supreme Court meets none of these criteria. There are no "special" or "important" reasons for granting the instant petition for review. This case does not concern a United States court of appeals decision or a state court decision about "an important question of federal law" or about any "federal question."

In *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), the Court defined Rule 10's "special and important reasons" as

> reach[ing] to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

The issues raised by petitioners in the instant action do not rise to this level of "special and important." Even

assuming, *arguendo*, that they are "special and important," they do not fall within any of Rule 10's listed considerations.

The core of petitioners' argument revolves around the last two paragraphs of the Court's decision in *Norman v. Reed*:

> This case presents one final issue, which we are unable to resolve. Some of Cook County's judges are elected by citizens of the entire county, and others by citizens of the separate districts. In responding to Reed's objection that the HWP had not fielded candidates for any elected judicial offices in Cook County, the Circuit Court held that, under § 10-2, "the exclusion of judicial candidates on the slate was a failure to fulfill the 'complete slate requirement' of the Election Code." The court then overruled the Electoral Board and treated this failure as an alternative ground for invalidating the Party's entire slate.
>
> We decline to consider whether that ruling was constitutional. The Supreme Court of Illinois itself did not address it and therefore did not decide whether, under Illinois law, the Party's omission of judicial candidates doomed the entire slate. We therefore remand the case to that court for its prompt resolution of issue.

In an effort to bring themselves within the purview of Rule 10, petitioners mince the Court's words and declare that "the Illinois Supreme Court disregarded this Court's said remand mandate." Petition at 13. The Pinchamites argue that the Court's opinion should be amended to read that the Illinois Supreme Court must "decide

whether the complete slate rule concerning Illinois judicial candidates is constitutional."

In short, not pleased with their victory in the Court and in the Illinois Supreme Court, the Pinchamites insist upon an entirely unnecessary constitutional decision and contend that the failure of the Illinois Supreme Court to render one creates a federal issue and meets Rule 10. Rule 10 is not so easily satisfied.

The Illinois Supreme Court considered the judicial slate issue to the extent necessary as directed by the Court. The Court did not instruct the Illinois Supreme Court to rule on constitutional grounds. Given its interpretation of the Illinois Electoral Code – that "the Party's omission of judicial candidates [did not] doom[] the entire slate – there was and is no need to address the constitutionality of the judicial slate requirement.

Under these circumstances, Supreme Court Rule 10 has not been met and cannot be met.

## THERE IS NO CONSTITUTIONAL CONTROVERSY FOR DECISION

The Illinois Supreme Court at issue was decided solely upon non-constitutional grounds.

The Court's unerring discipline is that it and the lower courts will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between

individuals. . . . " *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288 (1936). See also *Rice v. Sioux City Memorial Park Cemetery, Inc., supra.* "If a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." Furthermore, "appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground." *Berea College v. Kentucky,* 211 U.S. 45.

Mr. Pincham wants another United States Supreme Court decision where none is necessary under the state of the law and the law of this case. Mr. Pincham has all the relief that he will ever be entitled to receive. The issues presented for review have been decided and are plainly moot. There are no actual or potential obstacles of any kind to the lawfulness of the Pinchamites' presence on the November 1990 general ballot.

## THE HAROLD WASHINGTON PARTY'S FAILURE TO INCLUDE A COMPLETE JUDICIAL SLATE INVALIDATED ITS ENTIRE SLATE.

If certiorari is granted, the issues properly addressed are whether the failure of the Washington Party to field judicial candidates doomed the Party's entire slate and whether this result is constitutional. Respondents respectfully submit that the answer to both issues is affirmative.

The Harold Washington Party slated no judge candidates. Its failure to slate judges violated a cardinal principle of Illinois' liberal electoral laws and caused the remaining ballot to be invalid.

Section 10-2 of the Illinois Electoral Code addresses the petition requirements for a new or expanding party seeking to establish itself within a particular area. It states that:

> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.

The Electoral Code defines a political subdivision as a "unit of local government" and a "district" as " . . . any area which votes as a unit for election of any officer . . . and includes . . . judicial districts, judicial circuits, county board districts." 46 Ill.Rev.Stat. Sec. 1-3 [6][14].

Cook County is a political subdivision. Any party seeking to establish itself in Cook County must satisfy the requirements of §10-2. Accordingly, the Harold Washington Party was required to include in its petition "a complete list of the names of the candidates . . . for all offices to be filled." In the 1990 election, eighteen judgeships

were to be filled. Thirteen were County-wide judge positions; three were city-only judge position; and two were suburban-only judge positions.

Because eighteen judge positions were open for contest in the 1990 election, the Harold Washington Party was required to include candidates for these offices in their petition to appear on the ballot. The failure to include them rendered the petition invalid.

The Pinchamites attempted to avoid the obvious letter and spirit of the law by claiming that these judgeships are not County positions, but instead are State offices. This argument fails and is, in any event, legally irrelevant.

First, these positions are certainly County offices. The Electoral Code states that:

> The words "state office" or "state officer" include an office to be or an officer to be voted for, by the entire state, including United States Senator and Congressman at large. . . .
>
> The words "county office" or "county officer," include an office to be filled or an officer to be voted for, by the qualified electors of the entire county.

46 Ill.Rev.Stat. §7-4.

Judicial candidates are elected by the residents of Cook County and are, as a matter of law, County officers.

Second, the argument is, in any event, a red herring. Even if Cook County Circuit judges are state officers and required to file a petition with the State Board of Election, this fact would not release the Harold Washington Party

from its §10-2 obligations. The names of the candidates for judges, as offices to be filled in Cook County, must be included on a party petition that is filed with the County Clerk.

Whether County or State officers, the eighteen Cook County Circuit judges elected in the November 1990 election were elected by the voters of Chicago and Cook County. As such, a new party that sought to establish itself within the County was required by §10-2 to include candidates for those positions on its petition. Because the Pinchamite Harold Washington Party did not field judicial candidates, it did not meet its obligation under §10-2. Its petition, therefore, was fatally flawed.

## THE COMPLETE SLATE RULE IS CONSTITUTIONAL

It is universally accepted that states have a legitimate and compelling interest in assuring the integrity of the democratic process. *Williams v. Rhodes*, 415 U.S. 767 (1974), *Jenness v. Fortson*, 403 U.S. 431 (1971). Like all other legislative enactments, laws concerning this issue are presumed to be constitutional.

Regulation of the election process is subject to constitutional scrutiny and invalidation *only* if it places a significant burden upon the constitutional rights of either the candidates or the voters who wish to have their interests represented and if there is no outweighing state interest in its imposition. *Williams v. Rhodes, supra; Bullock*

*v. Carter*, 405 U.S. 134 (1972). The Harold Washington Party has not shown unacceptable burden or that Illinois has no significant interest in requiring the "complete slate" rule.

## A. THERE HAS BEEN NO SHOWING OF CONSTITUTIONAL BURDEN.

Those raising constitutional objections to any election restriction must make a particularized showing of the constitutional injuries inflicted upon them. *Storer v. Brown*, 415 U.S. 724 (1976).

As much as Mr. Pincham would like it to be otherwise, the proper focus of constitutional inquiry does not begin with the state's justification of the burden, but rather with the nature, quality, and onerousness of the burden placed upon the new parties. It is certainly not incumbent upon the objectors to defend the minuscule restriction of a complete slate unless and until petitioners show that the restriction has impacted ballot access or party formation.

*Bullock v. Carter* and its progeny all stand for the proposition that the level of constitutional scrutiny depends upon the degree of burden placed upon ballot access. Demonstration of burden in this case rests solely with the Board and with the Harold Washington Party.

In *Storer*, the Court found that a demonstrable support requirement – in the form of a signature requirement – could not be deemed unconstitutional unless and until the actual burden of the requirement was analyzed and

found to be constitutionally onerous. Because the record did not include the size of the pool from which the signatures could come, the extent of the burden was unclear. The Court remanded the case for a determination of the size of the potential signature pool of the actual burden.

Similarly, in *Mandel v. Bradley*, 432 U.S. 173 (1977), the Court remanded the case because the trial court did not "sift through" all of the evidence to determine the scope of the burden upon the objectors.

In addition, the Court has required the particularized showing to demonstrate a heavy burden on the formation of new parties. For example, in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), the Court struck down an Illinois law that required parties seeking to establish themselves in a political subdivision to obtain signatures amounting to 5% of the population. The effect of this regulation was that, in Cook County, the number of signatures necessary was greater than 25,000. Candidates running in the entire *state* were required to amass only 25,000 signatures.

In the first go-round of this litigation, *Norman v. Reed*, the Court declared unconstitutional any Illinois law, rule, policy, or practice that invalidated all candidates on a party ballot *just because* the party did not obtain the requisite (and constitutionally-permissible) number of nominating signatures. In *Socialist Workers Party* and *Norman*, the burden upon the party was clear.

In contrast, the requirement to field judicial candidates is not unnecessary nor unduly burdensome. The

requirement to include judicial officers on its petition does not require any Herculean effort by the new party. If the new party is a genuine one and is supported by a finite segment of the population, the task of finding similarly-minded attorneys to run for a judicial position is not an insurmountable one. (The Court may take judicial notice of the hundreds of attorneys throughout Illinois who unsuccessfully seek judicial office). Likewise, it is certainly not so difficult that it would discourage groups that are dedicated to establishing a bona fide political party from attempting to establish that party.

The Harold Washington Party was required by §10-2 to include on its petition eighteen judicial candidates. Eighteen attorneys is an infinitesimal percentage (less that .05%) of the Illinois Bar, whose membership exceeds 36,000. This requirement is no burden and certainly cannot be characterized as a burden on ballot access or party formation.

Accordingly, on the record presented by these petitioners, the Court cannot even examine the constitutional justification of the complete slate requirement. Mr. Pincham's adherents have failed to show that they have or will suffer any constitutional or other damage as a result of the complete slate rule as it applies to judicial candidates.

## B. THE COMPLETE SLATE REQUIREMENT ADDRESSES A SUBSTANTIAL STATE INTEREST AND IS CONSTITUTIONAL.

In justifying an electoral regulation, a State is not required to show particularized proof of the harm that it

seeks to prevent. *Munro v. Socialist Workers*, 479 U.S. 189 (1986). The *Munro* Court explained that, to require a state to prove actual reasons would "invariably lead to endless court battles over the sufficiency of the 'evidence' marshaled by a State . . . " and " . . . would necessitate that a State's political system sustain some level of damage before that legislature could take corrective action." *Munro* at 195. *Munro* recognized that a State's legislature should address possible problems prospectively, rather than retrospectively. This allows states some amount of discretion in predicting possible problems and in legislating regulations that would avoid them. In addition, it releases the state from the burden of proving the actual and particularized harm that the regulation cures.

By engrafting §10-2's "complete slate" provision, the Illinois legislature simultaneously encourages legitimate ballot access and party formation and discourages splintered, fragmented, and fictitious parties. Illinois is particularly susceptible to the formation of such parties because of the exceedingly liberal provisions of its election law regarding new parties.

Illinois actively encourages new party formation. Illinois dictates that individuals seeking political office must secure 25,000 signatures to qualify to appear on the ballot. 46 Ill.Rev.Stat. §10-3. However, if like-minded individuals come together to form a political party, Illinois does not require that each member of the group gather 25,000 nominating signatures. Instead, the law allows *all* members of the party to qualify for ballot access with a *total* of 25,000. 46 Ill.Rev.Stat. §10-2.

For example, if it had actually qualified for ballot access in the November 1990 election and if it had submitted a legitimate complete slate, the Pincham Harold Washington Party would have needed only 25,000 – as opposed to over 400,000 if its candidates had run separately and independently – to run for a total of approximately forty-one offices. In this way, Illinois election law strongly favors the formation of new political parties.

An inherent dilemma of Illinois' liberal election laws is that it is fraught with the possibility that a group of people with individual agendas – be they personal, political, economic, racial, or whatever – may join together to take advantage of the diminished signature requirement in order to get on the ballot, without being united to form a genuine party. Illinois has a right to protect its electoral system from that abuse. That is the substantial state interest that justifies the complete slate rule. In *Storer*, the United States Supreme Court specifically acknowledged "the substantial state interest in encouraging . . . political stability . . . " and " . . . in attempting to ensure that the election winner will represent a majority of the community. . . . " *Storer*, at 729.

Illinois has encouraged political stability and insured majority rule by placing one – *and only one* – obstacle to new party formation. Groups of like-minded people wishing to take advantage of Illinois' liberal party formation rules must pay one and only one price: *they must submit a complete slate of candidates for all positions at issue.*

By engrafting the "complete slate rule" in §10-2, the Illinois legislature took one step in avoiding the evils of political instability and minority government. If, for

example, a group of individuals wanted to take advantage of the decreased signature requirement, but did not really share a common political or social philosophy, this would be more apparent to the public as the number of candidates – and, hence, the number of political philosophies and individual agenda – increased. In addition, it would be more difficult to involve a greater number of people in such a scheme. The more offices that must be fielded, the greater likelihood that the new party is a genuine one.

In short, by requiring that new parties slate candidates for all positions to be filled, §10-2 helps to ensure that people who claim to be members of a new political party are not really individual opportunists – or, like Mr. Pincham and his followers, disgruntled regulars from other established parties – taking advantage of the lessened demonstrable support requirement imposed on new political parties.

## CONCLUSION

The issues before the Court are moot and do not otherwise merit further review.

If the Court determines to undertake the petition and to consider the case on its merits, the Illinois Supreme Court should be reversed. Although it correctly concluded that Illinois has a "complete slate" requirement, it incorrectly decided that judicial candidates are not part of the complete slate requirement and it failed to decide that the complete slate requirement is clearly constitutional.

The Court should deny the petition for writ of certiorari.

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